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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>MANUEL VILLALOBOS,<br>Defendant and Appellant. | A120998<br><br>(Contra Costa County<br>Super. Ct. No. 5-0706838) |

As a result of a police search, without warrant, of an outbuilding located on property where appellant Manuel Villalobos resided, but owned by appellant's father, appellant was charged with manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a))[1] and with possession of components to manufacture methamphetamine (§ 11383.5, subd. (c)(1)). Appellant moved to suppress the evidence against him, contending that consent given to police officers by his father to search the outbuilding was ineffective, that his own cooperation with officers in gaining access to the building did not constitute consent for a search, and that the evidence was therefore illegally seized. When that motion was denied, he entered a plea of no contest to both charges. Appellant challenges denial of his suppression motion as authorized by Penal Code section 1538.5, subdivision (m). We find no error and will affirm.

[1] All further statutory references are to the Health and Safety Code unless otherwise indicated.

## BACKGROUND

On March 28, 2006, Officer Richard White and Sergeant Hearn of the San Pablo Police Department went to a residence at 1825 California Avenue in the City of San Pablo. There they were invited into the residence by the owner, Leobardo Villalobos, appellant's 84-year-old father.[2]

Officer White had received earlier information from a citizen informant concerning possible narcotics manufacturing activity in a shed at the rear of the property.[3] Officer White, who was assigned to local code enforcement duties, as well as to narcotics enforcement, was also aware of an action the previous year by the police department's Code Enforcement Team, seeking to abate use of a shed at the rear of the property as a living unit. No violation had been found, and that case was closed.

He told Leobardo that he was there to confirm that no one was currently living in the shed, and asked for permission to inspect the shed. He testified that this was a "ruse." Leobardo told the officers that they could check the shed.

Officer White also asked Leobardo whether Lester Reinhardt was currently living at the house. Reinhardt, who was Leobardo's son-in-law, was on probation with a search clause, and had listed Leobardo's house as his residence. Leobardo told the officers that Reinhardt no longer lived there, but had come to the house recently to retrieve mail.

When asked if there was anyone else in the residence, Leobardo said that his son, appellant, was in the house, and told the officers "you can go in the back and get him." Appellant was in an attic bedroom, and came down to talk to the officers at their request. When told that the officers were there to confirm whether someone was living in the shed, appellant became visibly nervous. Appellant initially told officers that he thought his girlfriend had the key to the shed, but when asked to call her to retrieve the key, said

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[2] Leobardo Villalobos died prior to the preliminary hearing. We will refer to him as "Leobardo" only to avoid confusion with appellant.

[3] The court sustained appellant's *Harvey/Madden* objection to consideration of the informant's information as a basis for probable cause to search. (*People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017.)

that he might have one. He ultimately retrieved a key from his bedroom, led the officers to the shed, which was about 20 to 30 feet from the house,[4] and unlocked the padlock with the key. As he pulled the shed door open and stepped back, appellant said "I know I'm going to jail now." Officer White pulled aside a blanket that was hanging across the door opening, and observed jars of chemicals, including red phosphorous, and laboratory equipment that he believed was consistent with manufacture of methamphetamine. When White asked appellant "[I]s that what I think it is?" appellant answered "yes."

Throughout the encounter with appellant, there was no physical contact by the officers and there were no threats or show of force. Prior to entry to the shed, the officers had not obtained, or solicited, express consent from appellant to the search. Appellant, however, expressed no objections. Subsequent to the discovery of the laboratory, and after being advised of his rights, appellant stated that he wished to cooperate and signed a consent search form for the residence. Additional evidence was recovered from a search of his bedroom, including packaging materials for methamphetamine, digital scales, and laboratory equipment.

Appellant was charged by complaint with manufacturing methamphetamine (§ 11379.6, subd. (a)) and with possession of components to manufacture methamphetamine (§ 11383.5, subd. (c)(1)). At the preliminary hearing on these charges, appellant moved to suppress the evidence against him, contending, among other things, that no valid consent to the search had been given.

Appellant testified on his own behalf in connection with the motion to suppress. He acknowledged that, although he had lived in the house for over 40 years, his parents owned the entirety of the property, including the sheds. He claimed that his parents never used the shed where the contraband was found, and that he and his girlfriend had the only keys. He told Officer White that his girlfriend had the key because he didn't want the officers to look in the shed. He never directly told the officers, however, that he did not

[4] There were apparently two sheds in the rear yard, only one of which was searched.

want them to look into the shed. He claimed that the officers said that they would search the shed regardless, and said that they would cut the lock with bolt cutters.

The magistrate denied the motion to suppress and appellant was held to answer on the charges. He considered the credibility of appellant's testimony, accepting some portions of the testimony, but expressly rejecting others, including appellant's explanation of his initial denial of having a key to the shed. In denying the motion, the magistrate found, based on the testimony presented, that appellant had not been detained by the officers, was not ordered by police to open the shed, and that he had done so voluntarily. He further found that both Leobardo and appellant had voluntarily consented to the search of the shed. Appellant moved to dismiss the information filed against him (Pen. Code, § 995) and renewed his motion to suppress. The court denied the motion. On January 14, 2008, appellant entered a plea of no contest to both charges. The court suspended imposition of sentence and placed him on supervised probation for three years, on the condition he serve 210 days in jail, among other conditions. This appeal follows.

## DISCUSSION

Appellant argues the trial court erred in finding that both appellant and his father had consented to the search of the shed. We disagree.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362; see also *People v. Ramos* (2004) 34 Cal.4th 494, 505.)

Where, as here, a defendant shows that a warrantless search was conducted, "the burden shifts to the People to justify the search by establishing the search fell within an exception to the warrant requirement." (*People v. Bishop* (1996) 44 Cal.App.4th 220, 237.) It is " 'well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.' " (*People v. Woods* (1999) 21 Cal.4th 668, 674, quoting *Schneckloth v.*

*Bustamonte* (1973) 412 U.S. 218, 219 (*Schneckloth*) [free and voluntary consent to search is one recognized exception to the Fourth Amendment's warrant requirement].) The Fourth Amendment's prohibition against warrantless searches of homes does not apply when voluntary consent to the search has been given by someone authorized to do so. (*People v. Rivera* (2007) 41 Cal.4th 304, 311.)

The validity and voluntariness of consent is a question of fact to be determined in light of all the circumstances. (*People v. James* (1977) 19 Cal.3d 99, 106.) In our review, we draw all reasonable inferences from the officer's testimony in favor of the court's ruling. (*Davis v. Kahn* (1970) 7 Cal.App.3d 868, 874.) We also accept the court's findings regarding appellant's credibility. (See *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 258; *People v. Block* (1971) 6 Cal.3d 239, 245 [credibility of witnesses is a question of fact].)

*Consent of Leobardo Villalobos*

Appellant concedes that Leobardo Villalobos was the owner of the entirety of the property at 1825 California Avenue, including the location of the sheds. He therefore had at least common, if not superior, authority over the property which was the subject of the search. "It long has been settled that a consent-based search is valid when consent is given by one person with common or superior authority over the area to be searched; the consent of other interested parties is unnecessary. [Citations.] Warrantless consent searches of residences have been upheld even where the unmistakable purpose of the search was to obtain evidence against a nonconsenting coinhabitant." (*People v. Woods*, *supra*, 21 Cal.4th at p. 676, see also *In re Scott K.* (1979) 24 Cal.3d 395, 404 [valid consent may be obtained from the owner or tenant of property, or from a third party who possesses common authority over such property].) "The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements [citations] but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his [or her] own right and that the others have assumed the risk that one of their number might

permit the common area to be searched." (*United States v. Matlock* (1974) 415 U.S. 164, 171, fn. 7.)

Appellant argues that Leobardo lacked authority to consent to a search of "appellant's locked shed." He asserts that the fact that appellant had a key to the shed, and Leobardo apparently did not, is significant, if not determinative, on this issue citing *People v. Pleasant* (2004) 123 Cal.App.4th 194, as "illustrative." Appellant misreads *Pleasant*. In that case, the fact the defendant's mother, who was subject to a probation search clause, had access to the room searched by use of a key was found to be evidence of her ability to grant consent by virtue of her common authority over that area (*People v. Woods, supra*, 21 Cal.4th 668), and a basis to find that the defendant had no separate reasonable expectation of privacy in the room, even though locked. (*Pleasant, supra* at pp. 197-198.)

The officers were aware that Leobardo had been identified as the owner of the property during the preceding code violation abatement investigation. Appellant never contested, in the officers' presence, Leobardo's authority to consent to a search of the shed. Accordingly, they could reasonably rely on his apparent authority over the premises and his ability to authorize the search. When police officers reasonably and in good faith believe that a third party has authority to consent to a search, such is reasonable and lawful even if that party does not have actual authority. (*Illinois v. Rodriquez* (1990) 497 U.S. 177, 179.)

Appellant further contends that because the officers had to "extract the key from appellant," the search was beyond the scope of whatever consent Leobardo may have granted, since there was no showing that Leobardo would have permitted them to cut off the lock to make a forced entry without the key. He correctly cites *People v. Cantor* (2007) 149 Cal.App.4th 961, for the proposition that a consensual search may not legally exceed the scope of the consent supporting it. (*Id.* at p. 965.) He ignores, however, the court's articulation of the standard in determining that scope. " 'The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness—what would the typical reasonable person have understood

by the exchange between the officer and the suspect? [Citations.]' (*Florida v. Jimeno* (1991) 500 U.S. 248, 251 . . . .) 'Whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of circumstances. [Citation.] Unless clearly erroneous, we uphold the trial court's determination.' [Citation.]" (*Cantor, supra*, at p. 965.) Where there are no express findings of fact, it is implied that the court made whatever findings were necessary to support the judgment or order. (*People v. Fulkman* (1991) 235 Cal.App.3d 555, 560.) The magistrate did not find the consent given by Leobardo to be limited in the fashion appellant suggests, and there is no basis to conclude that his determination was clearly erroneous.[5]

The evidence supports the conclusion that Leobardo had both actual and ostensible authority to grant consent to search of the shed, and the uncontradicted evidence supports the magistrate's finding that he did give his consent to search of the shed, without the restrictions or limitations that appellant suggests.

*Appellant's Consent*

Appellant does not deny that he unlocked the shed to admit the officers, and that, although he testified that he felt "pressured," he never voiced any disagreement with the permission given by his father to the officers to conduct the search. The magistrate, having heard the testimony of both the investigating officer and appellant, made a finding that he did consent. That finding is supported by substantial evidence and makes unavailing appellant's reliance on *Georgia v. Randolph* (2006) 547 U.S. 103, in which the Supreme Court held that one cotenant's consent to search could not prevail over the express objections of another present and objecting cotenant.[6] Here appellant made no such objection, as confirmed by his own testimony.

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[5] Appellant references comments made by the reviewing judge (Judge Steven Austin) on the scope of consent at the hearing on the renewed motion to suppress to suggest that the court had "inverted the burden of proof" on this issue. It is the magistrate's findings that we consider on this appeal. (*People v. Fulkman supra*, 235 Cal.App.3d at p. 560.)

[6] In its analysis, the Supreme Court focused on the absence of any superior rights between cotenants in the absence of "some recognized hierarchy, like a household of

Appellant asserts that "[n]ot saying 'no' does not amount to consent," but consent may be given nonverbally. (*People v. Panah* (2005) 35 Cal.4th 395, 467.) Appellant's consent did not need to be express, but could properly be implied from his conduct in unlocking and opening the shed door for the officers. (See *People v. Frye* (1998) 18 Cal.4th 894, 990; *People v. Martino* (1985) 166 Cal.App.3d 777, 791.)[7]

Appellant argues that even if he were deemed to have consented by his acquiescence in unlocking the shed, any such consent was coerced, and was tainted as the product of an unlawful detention. The difficulty with this argument is the lack of any substantial evidence that appellant was detained by the officers, or that any coercive tactics were used.

A consent to search is invalid if not freely and voluntarily given. (*People v. Boyer* (2006) 38 Cal.4th 412, 445.) If the validity of a consent is challenged, the prosecution must prove it was freely and voluntarily given—i.e., " 'that it was [not] coerced by threats or force, or granted only in submission to a claim of lawful authority.' " (*Id.* at pp. 445-446, quoting *Schneckloth, supra*, 412 U.S. at p. 233; *Florida v. Royer* (1983) 460 U.S. 491, 497.) Whether consent was voluntary or was the product of coercion on the part of searching officers is again a question of fact to be determined from the totality of the circumstances. (*Schneckloth, supra*, at p. 227; *People v. Jenkins* (2000) 22 Cal.4th 900, 973.)

In the first instance, there is no constitutional prohibition on police officers seeking interviews with suspects or witnesses in their homes. (*People v. Rivera, supra*, 41 Cal.4th at p. 308.) "Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur." (*In re*

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parent and child or barracks housing military personnel of different grades . . . ." (*Georgia v. Randolph, supra*, 547 U.S. at p. 114.) Whether, after *Randolph*, a parent who owns a residence has a superior right to consent to search, at least with respect to areas of common control, over express objection of a child is an issue we do not need to reach on the facts of this case. (See *People v. Oldham* (2000) 81 Cal.App.4th 1, 10.)

[7] *People v. Frye, supra*, 18 Cal.4th 894, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, footnote 22.

*Manuel G.* (1997) 16 Cal.4th 805, 821.) As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual, and not a detention. (*People v. Colt* (2004) 118 Cal.App.4th 1404, 1411.) The reasonable person test is objective and presupposes an innocent person. (*Ibid.*, citing *Florida v. Bostick* (1991) 501 U.S. 429, 438.)

Although appellant testified that he felt that he had to follow the directions of the police officers, and did not feel free to leave, there was no objective evidence that the officers did anything to restrain his movements within the house, or to coerce appellant in any fashion.[8] He acknowledged that the officers used no physical force against him, and never threatened him with detention or arrest before he opened the lock. The only statement he attributes to the officers as purportedly coercive is his allegation that one of the officers told him, when he initially denied having a key, that they could use bolt cutters to enter the shed.[9] Assuming this is so, appellant does not explain why this statement would prompt him to produce a key, rather than requiring the officers to do exactly that, if he truly objected. A defendant may not simply "defeat his prosecution by voluntarily revealing all of the evidence against him and then contending that he acted only in response to an implied assertion of unlawful authority." (*People v. Michael* (1955) 45 Cal.2d 751, 754.)

The magistrate, who considered appellant's testimony and all of the surrounding circumstances, found that appellant was not required to open the shed, nor was he ordered to open the shed. "He was asked and he complied." The magistrate's findings that

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[8] At the review hearing, appellant sought to introduce additional evidence, by way of police dispatch records, that there were additional officers at the scene, outside the residence as evidence of intimidating or coercive circumstances. The fact that other officers were present was the subject of appellant's testimony before the magistrate, and was presumably a factor already considered by the magistrate in assessing the totality of the circumstances to determine the appellant's consent was voluntary.

[9] Appellant also complains that police required that he secure his dog. Appellant's dog may have been detained. He was not.

appellant was not coerced, and that he voluntarily consented to search of the shed, are supported by the evidence.

*Search Pursuant to Probation Conditions*

The People contend that the search of the shed was also justified on the basis of the probation search clause imposed on Lester Reinhardt. We need not reach the issue, however, because as we have determined the magistrate's findings that appellant voluntarily consented to the search of the shed was supported by substantial evidence.

## DISPOSITION

The judgment is affirmed.

_____
Bruiniers, J.*

We concur:

_____
Simons, Acting P. J.

_____
Needham, J.

* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.